

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

April 27, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 06OD-024
OAHU

Issuance of Management Right-of-Entry Permit to the Division
of Forestry and Wildlife and Delegation of Authority for the
Issuance of Right-of-Entries at Moanalua Valley, Oahu, Tax Map
Keys: (1) 1-1-12:2, 15, 35 and 1-1-13:1, 2

APPLICANT:

Division of Forestry and Wildlife whose business and mailing
address is 1151 Punchbowl Street Room 325, Honolulu, Hawaii
96813.

LEGAL REFERENCE:

Sections 171-55, Hawaii Revised Statutes, as amended.

LOCATION:

Government lands situated at Moanalua Valley, Oahu, identified by
Tax Map Keys: (1) 1-1-12:2, 15, 35 and 1-1-13:1, 2 as shown on the
attached map labeled Exhibit A.

AREA:

3,716 acres, more or less.

ZONING:

State Land Use District:	Conservation
City & County of Honolulu LUO:	P-1, Preservation

TRUST LAND STATUS:

Acquired after statehood

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: NO

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

DOFAW management functions covered by Title 12, Chapters 183, 183D, 185, 186, 195, 195D, 195F, Hawaii Revised Statutes, as amended and Hawaii Administrative Rules, Title 13, Chapters 104, 105, 107, 109, 121, 123, 124, 130 and 209.

TERM OF RIGHT-OF-ENTRY:

Upon Land Board approval up to the issuance of the executive order document.

CONSIDERATION:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

Although some of the areas are being considered for multiple uses in the future, the area has historically been undeveloped.

BACKGROUND:

The Land Board on February 23, 2007, under agenda item D-4 granted final approval for the acquisition of private lands and to recommend to the Governor a set aside to the Division of Forestry and Wildlife for addition to the Honolulu Watershed Forest Reserve for watershed protection and research, native species habitat restoration, endangered species recovery, and forest recreation, and a set aside to the City and County of Honolulu for approximately 2.848 acres for public recreation purposes. On March 28, 2007 the warranty deed (land Office Deed No. S-28842) recorded at the Bureau of Conveyances. The purchase price from The Trust for Public Land of 3,716 acres in Moanalua Valley was \$5,500,000.

Next step will be to process the set aside to the Division of Forestry and Wildlife for 3,713.279 acres for addition to the Honolulu Watershed Forest Reserve for watershed protection and research, native species habitat restoration, endangered species recovery, and forest recreation and a set aside to the City and County of Honolulu for approximately 2.848 acres for public recreation purposes.

DISCUSSION:

Staff is processing the set aside to the City and County of Honolulu. In the interim, the balance of lands to be set aside to DOFAW remains as 'unencumbered land' under Land Division. DOFAW needs to complete a public hearing and process an Executive Order to put the subject lands into the Honolulu Watershed Forest Reserve. Estimate time: 6 months or more.

Land Division does not have the staffing or expertise to manage these lands on behalf of DOFAW. There are archaeological, botanical, habitat and historical sites including rock fall hazard areas.

CONCLUSION:

To alleviate conflict between the two Divisions, staff is recommending the issuance of a management right-of-entry to DOFAW. Furthermore, staff is requesting the authority to issue right-of-entry permits be delegated to the Chairperson on behalf of DOFAW. Currently, unencumbered rules allow 'the board or its authorized representative' to issue permits. Thus, DOFAW can review a request and if the request is acceptable, generate a right-of-entry permit.

The Land Board on September 28, 2001, under agenda item D-4 approved staffs' recommendation to delegate authority to the Chairperson, Land Division Administrator, District Land Agents and Supervising Land Agent to issue right-of-entry permits for public lands under the management of the Land Division. In this approval, rent to be charged was \$.10 per square foot per day and the Chairperson may waive the rent for:

- a) any government-related project;
- b) uses where no entity involved in the use intends to profit monetarily; or
- c) uses that provide the State of Hawaii with substantial, out-of-State marketing exposure, through television, movies or other media.

These requirements established by the Land Board in 2001 should be applicable to DOFAW when reviewing a request for a right-of-entry. Furthermore, staff is recommending besides the Chairperson, but the DOFAW Administrator and the DOFAW Oahu Branch Manager have the authority to issue periodic right-of-entry permits, if deemed appropriate.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed delegation and related dispositions as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment;

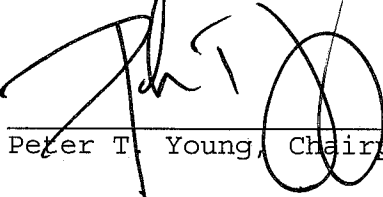
2. Authorize the issuance of a management right-of-entry permit to the Division of Forestry and Wildlife covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 1. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time; and
 2. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Delegate authority to the Chairperson, Division of Forestry & Wildlife Administrator, and the Division of Forestry & Wildlife Oahu Branch Manager to issue periodic right-of-entry permits pursuant to Section 171-55, Hawaii Revised Statutes, for public lands located at Moanalua Valley, Oahu, Tax Map Keys: (1) 1-1-12:2, 15, 35 and 1-1-13:1, 2.

Respectfully Submitted,



Charlene E. Unoki
Assistant Administrator

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

EXHIBIT "A"

Land Board approval of September 28, 2001

D-4

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

September 28, 2001

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

STATEWIDE

Subject: Amendment to the Delegation of Authority to Issue Right-of-Entry Permits on
Unencumbered State Lands

BACKGROUND:

As landowner, the Department (Land Division) receives numerous requests for the temporary use of public lands for a variety of purposes. These requests may be for sites on either encumbered or unencumbered land. Some of these requests include, for instance:

- Beach activities – surf meets, beach weddings, beach Olympics, volleyball tournaments, canoe races
- Scientific, engineering or archaeological studies, soils investigations or surveys
- Storage of construction materials or equipment for abutting property
- Land maintenance activities on State land or abutting private property
- Taping of movies or television shows
- Miscellaneous – fireworks display, geography field trips

In response to many of these requests, the Department currently issues "rights-of-entry." There are three main instances in which we issue rights-of-entry:

- 1) Right-of-entry to enter public lands encumbered by a lease, executive order or other encumbrance. Staff obtains approval from the Board of Land and Natural Resources (Board) for these requests.
- 2) Rights-of-entry for construction and/or management that precede a land disposition, e.g., set aside, lease, utility easement. These requests are approved by the Board at the same time the disposition is approved.
- 3) Right-of-entry to enter unencumbered public lands for a minor, temporary use that does not involve a land disposition. These rights-of-entry are issued by the Chair, Land Administrator or District Land Agent pursuant to the delegated authority, the

As Amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

September 28, 2001. per

ITEM D-4

subject of this Board submittal.

The Board delegated the authority to issue rights-of-entry on unencumbered lands on two occasions (see Exhibits A and B). On June 24, 1983, under agenda item F-9, the Board authorized the Chairperson to issue rights-of-entry "he may deem appropriate to the foregoing Camp Andrews area and other unencumbered State parcels." On June 14, 1991, under agenda item F-11, the Board reaffirmed that the Chairperson may issue rights-of-entry for temporary activities on State-owned unencumbered lands and authorized the Administrator and District Land Agents to issue rights-of-entry for temporary activities on State unencumbered lands.

In the past, the District Land Agents broadly interpreted this delegated authority to mean they could issue rights-of-entry for any type of activity, for any length of time, where such activity is taking place on State unencumbered lands. Some rights-of-entry issued were, in essence, dispositions, conveying the right of occupancy. Through retraining, staff is now clear that their authority is not that far-reaching in that the delegation submittals referred to minor, innocuous activities such as huli huli chicken sales, beach volleyball and use of lands to access abutting construction sites.

The issue of the Department's authority to issue "rights-of-entry" on State land has come into question recently. Therefore, staff would like to confirm the authority by which we are issuing permits for the temporary use of State unencumbered land and clarify the parameters by which this delegated authority is exercised.

AUTHORITY:

Pursuant to Section 171-55, HRS, Permits, the Board of Land and Natural Resources (Board) may "issue permits for the temporary occupancy of state lands or an interest therein on a month-to-month basis by direct negotiation without public auction, under conditions and rent which will serve the best interests of the State, subject, however, to those restrictions as may from time to time be expressly imposed by the Board."

Pursuant to Section 13-221-5, HAR, Permits, "the Board or its authorized representative may issue permits governing the use of public facilities or areas within the premises." ("Premises" is defined as unencumbered public lands which means "any lands defined as public lands by section 171-2, HRS, and which have not been: (1) set aside for any purpose, by statute, executive order or otherwise, to a governmental agency, or (2) encumbered by lease, license, permit, easement or otherwise issued by the department.")

DEFINITIONS

Right-of-Entry Permit

First, staff would like to clarify the use of terminology. Staff is unsure as to where the term "right-of-entry" first arose. There is no reference to "right-of-entry" in either Chapter 171, HRS, or real estate dictionaries. In standard real estate terminology, it would appear we are

granting "licenses." According to "The Language of Real Estate" by John W. Reilly, a license is a "permission or authority to do a particular act on the land or property of another, usually on a nonexclusive basis. A license is a personal, revocable and nonassignable right, but unlike an easement, it is not considered an interest in the land itself."

In Chapter 171, HRS, however, a "license" specifically refers to granting a privilege to enter land to remove some sort of material (e.g., sand, timber, soil, rock, etc.). Furthermore, the authority to issue the right to temporarily use State land is established under Section 171-55, Permits. Therefore, staff is recommending that we clarify the terminology by calling them "right-of-entry permits" and define this term as an expressed, temporary right to enter State land for a specified purpose that is in writing.

"Activity" or "Use"

A wide spectrum of activities occurs on unencumbered State lands. In areas that invite the public (mostly beaches), there are so many varying uses that the question arises of what uses or activities should require a right-of-entry permit. For areas that the public is not allowed access to (i.e., vacant parcels of land), it is clear that any temporary activity or use would require a right-of-entry permit (otherwise, the use would be deemed unauthorized use of public lands).

For unencumbered lands where the public is invited, mostly beaches, we have been advised by the Department of the Attorney General that right-of-entry permits may be required only when an applicant desires to have exclusive use of a certain area of public lands or desires to engage in an activity that is otherwise restricted pursuant to rule. A right-of-entry permit authorizes the permittee to exclude others from the designated area or engage in the restricted activity. If a person or organization does not obtain a permit from the Department, they have no right to keep others out of the area.

ANALYSIS:

Who Can Issue What Kind of Right-of-Entry Permit

To develop the parameters by which the delegated authority may be used, staff identified different variables which may affect the exercise of this authority:

1. Type of activity. Temporary use permits are intended to grant permission to enter the premises to perform a particular activity, to exercise a certain privilege or to carry on a particular business. It is a personal privilege or permission with respect to some use of land and is revocable at the will of the landowner. Activities with greater liability or risks to the State should be approved at higher levels.
2. Length of use. Temporary use permits are intended to for temporary uses. The longer the duration of the activity, the more factors come into play, e.g., risk, liability. Therefore, we are recommending that the longer the use, the higher the approval level required.

3. Whether land is encumbered or unencumbered. The authority delegated to the Chairperson, Division Administrator and the District Land Agents should extend only to unencumbered lands. The Board has entered into a contract with the tenants of encumbered lands and, therefore, should approve any uses over those lands.
4. Whether activity constitutes a land use in the Conservation District. If the activity is a land use in the Conservation District, then additional scrutiny should be applied. In the past, rights-of-entry were given for the placement of sandbags on the beach.
5. Emergency nature of activity. Public health and safety concerns should be accounted for in the delegation of authority to ensure that the Department can act promptly and appropriately in emergencies.
6. Impact on resources and on public access and enjoyment of public lands. The greater the impact on resources and on public access, the higher the approval level should be obtained.

Rent to be Charged

Up to this point, staff has been charging a rent of \$0.15 per square foot per day based on an earlier appraisal. In response to a request to re-appraise this rent amount, the staff appraiser recommends a rent of \$0.10 per square foot per day. This rent amount was based on a survey of average rents charged by the Department for resort uses as the majority of the right-of-entry permits are issued for beach use for commercial purposes. The staff appraiser also recommended the rent be either the square foot amount using the \$0.10 charge or the minimum charge based on the cost of processing such permits. Staff is recommending, similar to revocable permits and leases, that a minimum rent of \$20 be charged for right-of-entry permits based on the average staff time and cost to process a right-of-entry permit.

There are certain types of uses which may not warrant charging rent, including engineering and scientific studies and surveys and educational field trips. Furthermore, in certain special circumstances, it is in the State's interest to waive the rent under a right-of-entry permit. Staff is recommending that the Chairperson have the authority to waive the rent in these cases.

RECOMMENDATION: That the Board:

1. Rescind the prior Board actions of June 24, 1983 (agenda item F-9) and of June 14, 1991 (agenda item F-11).
2. Delegate authority to the Chairperson, Land Division Administrator, District Land Agents and Supervising Land Agent to issue right-of-entry permits pursuant to Section 171-55, HRS, for public lands under the management of the Land

Division for exclusive uses as follows:

- a. The Chairperson shall have the authority to issue right-of-entry permits for uses that are:
 - 1) On unencumbered State land; and
 - 2) Any length in duration; or
 - 3) Address an emergency situation; or
 - 4) Otherwise necessary to serve the best interests of the State.
- b. The Land Division Administrator shall have authority to issue right-of-entry permits for uses that are:
 - 1) On unencumbered State land; and
 - 2) Do not involve a land use in the Conservation District; and
 - 3) No more than one year in duration; and
 - 4) Pose little liability to the State; and
 - 5) Have minimal impact on resources and on public access and enjoyment of public lands.
- c. Authority to issue temporary use permits shall be delegated to the District Land Agents and Supervising Land Agent for uses that are:
 - 1) On unencumbered State land; and
 - 2) Do not involve a land use in the Conservation District; and
 - 3) No more than one month in duration; and
 - 4) Pose little liability risk to the State; and
 - 5) Have minimal impact on resources and on public access and enjoyment of public lands.


Provided that this delegation shall not effect right-of-entry permits that have been issued prior to this date.

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3. Establish the rent for right-of-entry permits at \$0.10 per square foot per day with a minimum of \$20.00, provided that the Chairperson may waive the rent for:
- a. Any government-related project;
 - b. Uses where no entity involved in the use intends to profit monetarily; or
 - c. Uses that provide the State of Hawaii with substantial, out-of-State marketing exposure, through television, movies or other media.

Respectfully submitted,



 DIERDRE S. MAMIYA
Assistant Administrator

APPROVED FOR SUBMITTAL:


GILBERT S. COLOMA-AGARAN, Chairperson

APPROVED AS AMENDED. The Board amended the submittal by adding an additional recommendation/condition (3) Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF LAND MANAGEMENT

P. O. BOX 621

HONOLULU, HAWAII 96809

June 24, 1983

Board of Land and
Natural Resources
Honolulu, Hawaii

Gentlemen:

OAHU

Subject: Delegation of Authority to the Chairman for the
Issuance of Rights of Entry to Unencumbered State
Land

Revocable Permit No. S-4966 covering some 260,000 sq. ft. of
the former Camp Andrews area at Nanakuli, Waianae, Oahu, Hawaii,
Tax Map Key: 8-9-02:Por. 1 to the Department of Education for
parking and school bus turnaround purposes was cancelled at the
request of the Permittee on May 9, 1983.

As a community service, the Department of Education during
the term of its permit had been issuing its own permits covering
use of the area in question to various organizations (such as
the Lions Club, Pop Warner Group, etc.,) on almost a weekly
basis for huli huli chicken (and other types of) sales purposes.

To accommodate several groups which had been issued (now
null and void) Department of Education permits to the subject
area, the Chairman has executed rights of entry letters to the
following organizations:

1. The Lualualei Lions Club covering June 10, 11 and 12, 1983.
2. Makakilo-Honokai-Nanakuli Bobby Sox Softball League
covering June 18 and 19, 1983.
3. Waianae Coast Culture & Arts Society covering June 25
and 26, 1983.
4. Ka Hana O Ke Akua United Church of Christ covering
July 2, 3 and 4, 1983.
5. E Ola Kakou Womens' Softball Team covering July 9 and
10, 1983.

Permits (rights of entry) have also been requested by other
organizations for later dates extending into the Labor Day
Weekend.

APPROVED BY THE CHAIRPERSON
OF THE BOARD OF LAND AND
NATURAL RESOURCES

6/24/83

ITEM F-9

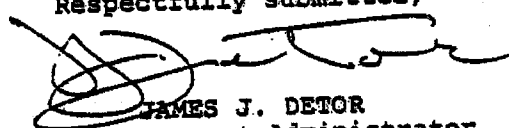
EXHIBIT A

RECOMMENDATION:

That the Board:

1. Confirm the above described rights of entry already issued by the Chairman.
2. Authorize the Chairman to continue issuing rights of entries he may deem appropriate to the foregoing Camp Andrews area and other unencumbered State parcels.

Respectfully submitted,


JAMES J. DETOR
Land Management Administrator

APPROVED FOR SUBMITTAL:


SUSUMU ONO, Chairman

JOHN WAINES
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF LAND MANAGEMENT
P. O. BOX 681
HONOLULU, HAWAII 96808

AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
CONSERVATION AND
ENVIRONMENTAL AFFAIRS
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT
DN 6356F
Refer to:
DU-91:15

June 14, 1991

Board of Land and
Natural Resources
Honolulu, Hawaii

STATEWIDE

SUBJECT: Delegation of Authority to the District
Agents, Division of Land Management, for
the Issuance of Rights-of-Entry to
Unencumbered State Lands

On June 24, 1983 under agenda Item F-9 the Board authorized the Chairperson to issue rights-of-entry for temporary use of State-owned unencumbered lands. Currently, the Land Management District office prepare various types of temporary rights-of-entry for activities which include:

- Huli huli chicken preparation and sale
- Beach activities (olympics, volleyball, etc.)
- Use of State lands to access construction sites on abutting private property (i.e., Waikiki hotel renovations)

Under the existing practice, the District Agent assesses the proposed activity and may suggest certain modifications before preparing the right-of-entry. The right-of-entry document includes specific conditions which would mitigate or eliminate conflict at the site. In addition, once the right-of-entry is issued the District Agent must insure that payment is made and proper insurance obtained.

Because of the District Agent's active involvement in the preparation, issuance and monitoring of the right-of-entry, and given the processing time it takes to secure signatures in Honolulu for activities that occur on the neighbor islands, Land Management believes that the District Agents should be given the responsibility to issue (sign) the right-of-entry. The suggested change is intended to allow Land Management an opportunity to better serve the community.

Recommendation:

That the Board:

1. Re-affirm that the Chairperson continue to issue rights-of-entry for temporary activities on State-owned unencumbered lands; and

EXHIBIT B

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

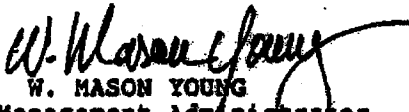
ITEM F-11

JUN 14 1991

Board of Land and
Natural Resources
Page Two
June 14, 1991

2. Authorize the Land Management District Land Agents and/or Administrator to issue rights-of-entry for temporary activities on State-owned unencumbered lands.

Respectfully submitted,


W. MASON YOUNG
Land Management Administrator

APPROVED FOR SUBMITTAL:


WILLIAM W. PATY, Chairperson